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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1337

THE HONORABLE LOUIS J. GILIBERTO, Judge of the Circuit Court of Cook County, Illinois, *et al.*, EITAN ARONOWITCH, *et al.*,

Petitioners,

v.

COMPAGNIE NATIONALE AIR FRANCE and SINGAPORE AIRLINES,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

RESPONDENT SINGAPORE'S BRIEF IN OPPOSITION TO THE PETITION

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RESPONDENT SINGAPORE'S BRIEF IN OPPOSITION TO THE PETITION

The respondent Singapore Airlines, Ltd. respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the Supreme Court of Illinois in this case. That opinion is reported at 74 Ill. 2d 90, 383 N.E. 2d 977 (1978).

Reasons Why the Writ Should be Denied

Because none of the plaintiffs-petitioners was a passenger of Singapore Airlines, Ltd. (Singapore), the provisions of the Warsaw Convention do not apply to Singapore.

Accordingly, Singapore limits its brief in opposition to Argument VI of the petition which relates to the doctrine for *forum non conveniens.*

Singapore respectfully submits, however, that unless this Court should elect to reverse the decision of the Illinois Supreme Court with respect to Article 28(1) of that Convention, the issue of *forum non conveniens* is, for all practical purposes, moot. In fact, even if this Court accepts the petition as to Article (28) and Air France, nevertheless it should deny the petition in so far as it refers to the forum argument and Singapore.

1. Argument VI of the petition fails to present any federal question of substance appropriate for review by the Supreme Court of the United States within the context of Rule 19 of this Court.

When its emotional rhetoric is pared away, Argument VI of the petition (pages 62 through 75) clearly fails to raise any genuine issue of due process. Nowhere is it suggested that any of the eighty-one plaintiff-petitioners has been or will be deprived of at least one appropriate and convenient forum. All that is raised in Argument VI is the concern that it may not prove possible for all of the plaintiff-petitioners to sue both of the respondents and Gulf Air Lines in the same forum.

Petitioners cite no authority whatsoever for their contention that eighty-one aliens, citizens of several countries, must as a constitutional right of due process, be guaranteed access to the same forum for the convenience of their American counsel.

No such right exists.

Nor, as pointed out by the Illinois Supreme Court (pages 12a and 13a of the petition) does the constitutional right of due process guarantee any person, or group of persons, the absolute right to sue in a single forum as many defendants as they care to name.

Assuming, however, that it might be possible for plaintiff-petitioners to sue both respondents and Gulf Air Lines in Cook County, Illinois, such a possibility is not a right but merely an opportunity which might be an element of convenience to them or their counsel.

It would, at most, be only one of several elements of convenience which the Illinois Supreme Court considered in accordance with the guidelines of *Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501, 91 L. Ed. 1055 (1947).

It is clear from its opinion that the Illinois Supreme Court considered carefully all of the appropriate elements of the doctrine of *forum non conveniens* and found the balance strongly in favor of the application of that doctrine.

This Court has never attempted ". . . to catalogue the circumstances which will justify or require either grant or denial . . ." of the remedy of *forum non conveniens. Gulf Oil Corp.* v. *Gilbert,* 330 U.S. 501, 508, 91 L. Ed. 1055, 1062 (1947). Nor has it ever attempted to substitute its own judgment for that of a lower court in the relative weighing of such circumstances.

While complaining of a deprivation of due process, plaintiff-petitioners have offered no authority which suggests that any such right has been denied to them. In

reality, they merely ask this Court to reconsider the same factors which the Illinois Supreme Court has already carefully weighed.

Such a request does not raise a federal question appropriate for review by this Court.

2. The Illinois Supreme Court properly found the balance of factors strongly in favor of the application of the doctrine of *forum non conveniens*.

As was noted by the Illinois Supreme Court, "It is difficult, indeed, to assume a situation in which the parties and operative facts of a case have a lesser connection with the forum of Cook County." (page 16a of petition).

None of the events giving rise to this litigation occurred within the Western Hemisphere, let alone in Illinois.

None of the plaintiff-petitioners is a citizen of the United States; and none purchased his ticket, or commenced or terminated his flight in this country.

No source of proof, either on the issues of liability or damages, is located in Illinois or in the United States. In this respect, this litigation differs significantly from aircraft crash cases such as *Varkonyi* v. *S. A. Empreso De Viaco Airea Rio Grandense* (Varig), 22 N.Y. 2d 333, 239 N.E. 2d 542 (1968), wherein witnesses and voluminous documents relating to product liability claims against domestic manufacturers were located in the United States.

And, the limited contacts which the respondents and Gulf Air Lines have with the State of Illinois have absolutely no connection with the occurrence giving rise to this litigation.

The Illinois Supreme Court properly and carefully weighed the relative access to sources of proof; the availability of potential witnesses; the familiarity of the forum with potentially applicable substantive law; the crowded dockets of the courts of Illinois; and all the other practical problems that make trial of a case easy, expenditious and inexpensive.

That court, after hearing oral argument and considering hundreds of pages of documents submitted by petitioners, properly found that the Circuit Court of Cook County was ". . . a distant, uninvolved and inappropriate forum in relation to the parties and incidents that occurred thousands of miles from Illinois." (page 20a of petition).

3. Singapore has guaranteed each of the eighty-one plaintiff-petitioners access to a suitable and more convenient forum.

In its motion to dismiss, Singapore assured the plaintiff-petitioners that, "Upon dismissal of this action . . . Singapore . . . is prepared to defend this lawsuit, whether as sole defendant or with others, in the United Kingdom." (page 25a of petition).

Obviously, Singapore cannot speak for Compagnie Nationale Air France or Gulf Air Lines, nor should it be expected to do so.

As shown above, the eighty-one plaintiff-petitioners have no absolute right, by due process or otherwise, to sue both of the respondents and Gulf Air Lines in a single forum. None of the cases which petitioners cite supports their contention that multiple defendants must guarantee multiple plaintiffs a single alternative forum.

Singapore has fully complied with the requirement that it assure the plaintiff-petitioners access to an alternative forum, i.e. the United Kingdom, or Singapore.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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